

## **REMARKS**

### **A. Interview and Amendments**

Applicant graciously thanks the Examiner for the telephone interview which took place on October 3, 2007, in which the Examiner indicated that the case would be allowable if the amendments listed herein were submitted. Independent claims 10 and 19 have been amended to require a light source.

### **B. Finality of the May 21, 2007 Office Action**

The Examiner indicated that the May 21, 2007 Office Action was a Final Office Action. The rejection under 35 U.S.C. § 112 presented in the May 21, 2007 Office Action, however, is a new ground of rejection that was neither necessitated by Applicant's amendment of the claims nor based on information submitted in an information disclosure statement. In Applicant's most recent response, only claim 18 was canceled. The remaining claims were not amended at all. The Examiner asserts that the claim amendments of September 11, 2006 necessitated this rejection. The claim amendments of September 11, 2006, however, merely amended the number of attachment arms from one to two. It did nothing to affect the structural relationship between the attachment arms and the shield. The Examiner does not show how this amendment could possibly have necessitated the new 35 U.S.C. § 112 rejection. Thus, under MPEP § 706.07(a), the May 21, 2007 Office Action should have been presented as a Non-Final Office Action. Thus, if a Notice of Allowance is not issued, Applicant respectfully requests that the Examiner reissue the May 21, 2007 Office Action as a Non-final Office Action.

C. Rejection under 35 U.S.C. § 112

Claims 1, 3-6, 8-10, 13-17, and 21 were rejected under 35 U.S.C. § 112 as being incomplete for omitting essential structural cooperative relationships of elements.

Specifically, the Examiner asserts that there is no structural relationship between the attachment arm and the shield. The claims have been amended such that the “at least one attachment arm” is “connected to said shield.” Thus, the structural relationship of the elements should be complete and definite.

D. Rejections under 35 U.S.C. § 102

The Examiner rejected claims 3-6, 8-17, and 21 under 35 USC § 102 as being anticipated by Frederickson. The Examiner asserts that Frederickson discloses “a shield having a rear wall 11 . . . wherein the rear wall 11 has a top edge and a bottom edge.” The Examiner does not identify the top or bottom edge in Frederickson, however. This is important because Applicant claims that “the aperture is contiguous with the bottom edge of the rear wall.” The Examiner has not shown how the aperture 22 is contiguous with the bottom edge of the rear wall. In fact, aperture 22 is not contiguous with any edge of wall 11 of Frederickson but is instead located on the ground stake tabs or flanges.

In addition, attachment arm 13 is not “connected to said shield” as required by the present claims. The shield 11 fits over the light fixture 12, but is not connected to it. Lastly, a rear portion of the light source is not positioned within the aperture 22, as required by the present claims. Because claim 10 has been amended to include a light source, this limitation is not an indication of the use of the invention, but is instead a clear structural element of the invention. This limitation should be given full patentable

weight. For at least these reasons, the Examiner has not provided a *prima facie* case of anticipation over Frederickson.

The Examiner additionally rejected claims 3-6, 8-17, and 21 under 35 USC § 102 as being anticipated by Krogman. The Examiner has again failed to identify any top or bottom edge of the rear wall 24 in Krogman. Because the Examiner has failed to identify a top or bottom edge of the rear wall, he has also failed to meet the claim limitation that “the aperture is contiguous with the bottom edge of the rear wall.” In addition, the Examiner’s description of the aperture in Krogman is confusing and unclear. Further, a rear portion of the light source in Krogman is not positioned within the aperture, as required by the present claims. As noted above, this is a clear structural element of the invention and should be given full patentable weight. For at least these reasons, the Examiner has not provided a *prima facie* case of anticipation over Krogman.

E. Rejections under 35 U.S.C. § 103

The Examiner rejected claims 1 and 19 over Frederickson in view of Lee as being obvious because Lee teaches the use of two stakes rather than one. As discussed above, Frederickson fails to teach several structural elements of the claims, such as an aperture which is contiguous with the bottom edge of the rear wall and a rear portion of the light source positioned within that aperture. Lee does not teach these elements at all. Thus, Lee does not aid in an obviousness analysis.

Thus, it is Applicant’s belief that all pending claims are in allowable form and all prior rejections have been overcome. Accordingly, Applicant respectfully submits that the application is in complete condition for allowance. The Examiner is invited to

telephone the undersigned should any issues remain after the consideration of this response.

Please charge any additional fees that may be required to Deposit Account No. 50-2548.

Respectfully requested,

NELSON MULLINS RILEY & SCARBOROUGH

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Date



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